

[Parties and Counsel Listed on Signature Pages]

UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA

IN RE: SOCIAL MEDIA ADOLESCENT
ADDICTION/PERSONAL INJURY PRODUCTS
LIABILITY LITIGATION

This Document Relates To:

ALL ACTIONS

MDL No. 3047

Case No. 4:22-md-03047-YGR (PHK)

**JOINT STATUS REPORT ON
FORENSIC IMAGING AND DEVICE
DATA**

Judge: Hon. Yvonne Gonzalez Rogers

Magistrate Judge: Hon. Peter H. Kang

Pursuant to Discovery Management Orders No. 8 and 9 (“DMO No. 8” and “DMO No. 9”), the Parties jointly provide this status report on forensic imaging and device data of Plaintiffs’ devices (hereinafter “Main Devices”)¹ as well as the Parties’ progress in conferring on certain other topics as directed by the Court.

I. Search Terms & Word Searchable Databases

In DMO 9, the Court ordered the Parties “to finalize their agreed upon search terms by no later than August 16, 2024.” In the week following the August 8, 2024 DMC, the Parties continued to meet and confer on Bellwether PI Plaintiffs search terms and made significant progress on finalizing those terms. On August 16, 2024, the Parties filed a joint Stipulation and Proposed Order requesting a one-week extension to continue their conferrals to further narrow disputes regarding a small number of remaining search terms, which the Court granted. See ECF 1072. On August 23, 2024, the Parties filed an additional joint Stipulation and Proposed Order (1) noting that they had reached agreement on general search terms to be run across Bellwether PI Plaintiffs’ data sources, and (2) requesting a one-week extension until August 30, 2024 to continue their conferrals and attempt to narrow disputes regarding a small number of remaining case-specific search terms, which the Court granted. See ECF 1083. The Parties agreed to case-specific search terms to be run across Bellwether PI Plaintiffs’ ESI on August 30; however, as anticipated, further discussions are occurring regarding the data sources across which a few terms will be run for two Bellwether PI Plaintiffs. The Parties also continue to discuss the search terms to apply to data sources Plaintiffs have identified for loss of consortium plaintiffs/parents/guardians, which the Parties anticipate resolving by the end of this month. In addition, the JCCP Bellwether PI Plaintiffs have agreed, absent good cause, to the same general search terms as those negotiated for the Bellwether PI Plaintiffs in the MDL.

¹ The Parties use the term “Main Devices” to refer to the Court’s definition in DMO 8 of devices from which information will be initially produced: “[A]ll devices (cellphones, tablets, laptops, computers, and the like) which are in each Bellwether PI Plaintiff’s possession, custody, or control and that they have habitually, routinely, or regularly used during the relevant time period to access the Defendants’ platforms.” Order at 8:24–9:25; Hrg. Tr. at 45:19–21.

1 **II. Forensic Imaging**

2 In DMO 9, the Court ordered: (1) the Parties “work out an agreement regarding an appropriate
3 procedure for dealing with CSAM on devices;” and (2) that Plaintiffs “produce full forensic imaging for
4 the remaining thirty-one devices at issue by no later than **August 30, 2024.**” *Id.* 2:20–23. The Court
5 further ordered that “[s]uch production shall be on a rolling basis with full imaging of a minimum of five
6 devices due by **August 16, 2024,** a minimum of five additional devices due by **August 23, 2024,** and all
7 remaining devices due by **August 30, 2024.**” *Id.* at 2:23–25.

8 On August 30, 2024 Judge Kuhl entered an order governing the handling of CSAM in the JCCP.
9 *See* JCCP CMO 10. MDL Plaintiffs have conveyed that it is substantially similar to the processes already
10 in place in the MDL and that Plaintiffs would have no problem adopting the same in the MDL if a similar
11 order is required here.

12 As of September 6, 2024, Plaintiffs reported that their ESI vendor completed full file system
13 (“FFS”) images of 30 Main Devices. Plaintiffs have also completed a “Before First Unlock” image of an
14 iPhone 7 belonging to Plaintiff Melton, which purportedly cannot have an FFS image taken due to
15 limitations of the device. Because of issues related to the device’s hardware and iOS versions, Plaintiffs
16 are also in the process of completing an FFS image of an iPad belonging to Plaintiff S.K. The Parties are
17 meeting and conferring over whether the iPhone 15 that now belongs to B.H.’s father (*see* chart in § VI)
18 qualifies as a Main Device that should undergo FFS imaging. The Parties will present any dispute over
19 this issue to the Court in a timely fashion.

20 Lastly, as discussed in the parties’ joint status report, Plaintiffs’ forensic vendor imaged J.D.’s
21 school-issued laptop on September 23, 2024. (ECF No. 1179.)

22 **III. Device Identifying Information**

23 In DMO 8, the Court ordered Plaintiffs to produce in chart form “every model number” and “the
24 applications” for the relevant devices. DMO 8 at 5–6. Because the Parties were not aligned on the content
25 of the chart, the Court clarified its intentions in DMO 9 and ordered the Parties to meet and confer by
26 August 16, 2024 “regarding what should be included in the chart of missing device identifying
27 information, after which Plaintiffs should begin supplementing the chart of agreed upon information.”
28 DMO 9 at 3:21–23. The chart shall be organized in a sufficient manner such that each device can be readily

1 identified with the corresponding data or files that are produced.” *Id.* at 3:11–13.

2 The Parties met and conferred on August 16, 2024 on the substance of a joint chart. Defendants
3 agreed to omit the columns for “Estimated Routine Usage,” “Operating System History,” “Application
4 Version,” “Date Application Installed” and “Date Application Deleted” from Appendix A for now, with
5 the understanding Defendants may request that information in the future depending on the device data that
6 Plaintiffs produce.

7 Plaintiffs agreed to substantially complete the agreed upon information in Appendix A by
8 August 30. As of September 19, 2024, Plaintiffs had provided:

- 9
- The serial number or ICCID number for 34 devices;
 - 10 • The IMEI, MEID, or MAC address 33 devices (all applicable devices);
 - 11 • The current operating system for 34 devices; and
 - 12 • A complete list of applications on 34 devices.

13 Plaintiffs have not yet provided the approximate start and end dates for the device usage; however,
14 Plaintiffs have relayed that those dates will be able to be provided once all images have been transferred
15 to the respective ESI vendors, or the Parties may agree that Defendants’ forensics vendors are better
16 positioned to obtain that information under Plaintiffs’ current proposal for production of filesystem data
17 that the Parties are currently discussing, as set forth further below.

18 **IV. Datasets, Relevant Applications, and Production Format and Logistics**

19 To date, Plaintiffs have made productions of text searchable ESI from a subset of the Main Devices
20 which had prior logical extractions performed. Plaintiffs’ ESI vendors are in the process of providing
21 Defendants an overlay for those prior productions from the main devices that specifically identify the
22 particular device and whether the production came from a logical or FFS image of the device.

23 Since search term negotiations have been largely finalized and CSAM process concerns have been
24 addressed, Plaintiffs’ forensics vendor has begun processing the device images and performing CSAM
25 reviews. Once complete, the processed FFS images of Plaintiffs’ Main Devices are sent to ESI vendors
26 for processing and ingestion into the review platforms for search terms to be run and productions to be
27 made.
28

The Parties have reached an agreement on specific interim deadlines for the bellwether personal injury Plaintiffs to substantially complete productions of text-searchable ESI from Plaintiffs' collections, including the full filesystem (FFS) images of Plaintiffs' Main Devices. The below chart reflects the Parties' agreed-to substantial completion deadlines for Plaintiffs' text-searchable ESI. Plaintiffs agree to substantially complete "data files, syslogs, and app settings . . . which are not readily searchable using keywords or search terms" as required by DMO 8 by November 4, 2024.

As of September 30, 2024, Plaintiffs S.K., Craig, and B.M. have substantially completed production of text searchable ESI from their Main Devices. Plaintiffs B.H., Smith, and Clevenger, have or will have substantially completed production of text searchable ESI from their Main Devices by the October 10, 2024 deadline. Counsel for Mullen is seeking an agreement from Defendants to extend the deadline for Mullen to Monday October 14, 2024 due to the fact that Plaintiffs ESI vendor is unable to complete the preparation of the production for transmittal to Defendants by the current deadline.

Plaintiff	Case No.	Plaintiff's firm	Selection mechanism	Date
S.K.	4:23-cv-01584	Motley Rice	Plaintiff pick	9/30/2024
Craig, Klinten	4:22-cv-05890	Beasley Allen	Defense pick	9/30/2024
B.M.	4:23-cv-01615	Motley Rice	Plaintiff pick	9/30/2024
B.H.	4:22-cv-06751	Lieff Cabraser	Defense pick	10/10/2024
Clevenger, Laurel	4:22-cv-06457	Beasley Allen	Defense pick	10/10/2024
Smith, Leslie	4:23-cv-05632	Lieff Cabraser	Plaintiff pick	10/10/2024
Mullen, Nuala	4:23-cv-00600	SMVLC	Plaintiff pick	10/10/2024
Melton, David	4:22-cv-06627	Beasley Allen	Defense pick	10/18/2024
J.D.	4:22-cv-05987	Southern Med Law	Defense pick	10/18/2024
D'Orazio, Jessica	4:23-cv-03751	Lieff Cabraser	Plaintiff pick	10/18/2024
McNeal, Dymand	4:23-cv-01092	Levin Papantonio	Defense pick	10/18/2024
M.G.	4:24-cv-01983	The Carlson Law Firm	Plaintiff pick	11/4/2024

V. Non-Text Device Data Production

The Parties, along with their respective third-party vendors or consultants, had an initial meet and confer this week on Thursday, September 19, 2024 to discuss the categories and location of data sought from Main Devices, and the requested format for production of the agreed upon data.² Defendants provided a list of the requested data categories to Plaintiffs on September 18, 2024. Since September 19, the Parties have continued to discuss the categories and location of data sought from Main Devices, and the requested format for production of the agreed upon data. Concurrently, this issue was discussed at the JCCP hearing in front of Judge Kuhl on September 25, 2024, where the MDL and JCCP Plaintiffs were asked to work together on a joint response regarding this production.

On Friday September 27, 2024, the MDL and JCCP Plaintiffs responded to Defendants' list of requested data categories by identifying those requested data categories they agree to produce immediately, data Plaintiffs do not agree to produce, and those categories that will require further meet and confer. The Parties mutually agreed that they would benefit from more time to continue their discussions before providing a joint status report to the Court. On September 27, 2024, the Parties filed a joint Stipulation and Proposed Order requesting an extension until October 2, 2024 to continue their conferrals, which the Court granted. See ECF 1138.

After providing their responsive edits on September 27, 2024, Plaintiffs later sent a second, informal proposal to Defendants offering to produce the inverse of the text searchable and reviewable user content from FFS image that Plaintiffs were already reviewing and producing through their ESI vendors. Plaintiffs offered to make this production with the condition that the device and usage data be produced directly to the Defendants' forensics vendor for their eyes only for the purposes of performing their analyses. Because there may be system-level data buried within application and other databases that contains substantive user content, Plaintiffs' proposal would require Defendants and their vendor to agree to a protocol to ensure any substantive user content is redacted or otherwise not disclosed to Defendants as part of the vendors' technical analysis. Under Plaintiffs' proposal, Plaintiffs would have the opportunity to review any such substantive user content for privilege and responsiveness before it is produced to Defendants, and Plaintiffs would produce that data to the Defendants and/or their forensics vendor.

The general parameters of this proposed protocol were discussed during a meet and confer held on October 1, 2024, which included the requisite Plaintiffs representatives from the JCCP and the MDL, Defendants, and both Parties' respective forensics experts. Plaintiffs provided Defendants with a draft protocol on Thursday October 3, 2024, and a revised draft protocol on October 4, 2024. The Parties met and conferred on October 9, 2024 to discuss some proposed edits and any questions or concerns with their respective experts. Plaintiffs are sending a revised draft protocol based on the result of the recent meet and confer to Defendants by end of day today, October 10, 2024.

VI. Lost Devices³

Based upon information provided by bellwether Plaintiffs in discovery responses and separate correspondence, several Plaintiffs have lost, disposed of, or reset their devices they used to access Defendants' platforms since filing their complaints. Below is a listing of the relevant information as to each device.

	Plaintiff	Device	Information concerning Loss
1	Craig	iPhone 12 ProMax	According to this Plaintiff's response to Interrogatory No. 7, he "sold the iPhone 12 ProMax to a phone reclamation kiosk" in August 2022.
2	Craig	iPhone 13 ProMax	According to this Plaintiff's response to Interrogatory No. 7, he "sold the iPhone 13 ProMax to a phone reclamation kiosk" after purchasing an iPhone 15 sometime after October 2023.
3	Craig	Lenovo Chrome book	According to this Plaintiff's response to Interrogatory No. 7, he "sold [his] Chromebook" in "Spring 2023."
4	J.D.	HP laptop	According to this Plaintiff's response to Interrogatory No. 7, this laptop "was taken to a pawn shop" in May 2024 and it is no longer in her possession, custody, or control.

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² JCCP Plaintiffs also attended that meet and confer.

³ Plaintiffs state that half of the devices provided in this list were not Main Devices as defined herein.

5	B.H.	iPhone 15	On August 7, Plaintiffs informed Defendants that this Plaintiff gave this device to her father who currently possess the device. A table provided by Plaintiffs on August 7 listed the device is no longer in her possession, custody, or control, but referred Defendants to Plaintiff's August 7 email for clarification.
6	S.K.	iPhone 13	According to this Plaintiff's response to Interrogatory No. 7, she "routinely used" this device "to access Instagram and TikTok" and it is no longer "in [her] possession." According to a table provided by Plaintiffs on August 7, this device was logically imaged on September 14, 2023, so this device must have been lost after that date.
7	Melton	Samsung Tablet	According to this Plaintiff's response to Interrogatory No. 7, he "misplaced" this device in 2022 after it became inoperable.
8	Melton	Desktop	According to this Plaintiff's response to Interrogatory No. 7, he "discarded" this device in December 2023 and it "inexplicably crashed."
9	Mullen	MacBook	According to this Plaintiffs' response to Interrogatory No. 7, she is "not in possession" of this device and stopped being in possession of it sometime after "it was imaged in 2023 in connection with the litigation," but this device is not included Plaintiffs' Table of Main Devices.
10	Clevenger	iPhone 13	On August 22, Plaintiffs informed Defendants that Plaintiff Clevenger inadvertently performed a factory reset on her iPhone 13 in August 2024 after the Court ordered that Plaintiffs conduct a full file system extraction of all Main Devices.

The Parties are continuing to meet and confer regarding lost devices or data and any corresponding relief. The Parties will present any disputes over these issues to the Court in a timely fashion.

VII. Supplemental Status Reports

The Parties will provide a Supplemental Status Report to the Court on October 17, 2024 unless the Court directs otherwise.

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1 Respectfully submitted,

2 DATED: October 10, 2024

By: /s/ Lexi H. Hazam

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ATTESTATION

I, Andrea R. Pierson, hereby attest, pursuant to N.D. Cal. Civil L.R. 5-1, that the concurrence to the filing of this document has been obtained from each signatory hereto.

Dated: October 10, 2024

/s/ Andrea R. Pierson
Andrea R. Pierson